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F I S C A L I M P A C T R E P O R T

SPONSOR SJC ORIGINAL DATE 3/19/15 LAST UPDATED _____ HB _____

SHORT TITLE Insurance Code Tax, Fee And Other Changes SB 577/SJCS

ANALYST Cerny/Clark

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		
	\$1,000.0, See Fiscal Implications*	\$1,000.0, See Fiscal Implications*	Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

*See the first full paragraph at the top of page three for the key additional fiscal implication

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the Superintendent of Insurance (OSI)

SUMMARY

Synopsis of Bill

The Senate Judiciary Committee Substitute for Senate Corporations and Transportation Committee Substitute for Senate Bill 577 makes the following changes in the Insurance Code:

In 59A-5-30, “Penalties for Late, False Annual Statements,” the bill eliminates the requirement for the Superintendent to rely on the filing of a civil action in state court by the Attorney General to recover penalties imposed by the Superintendent on any insurer who has failed to file its annual statement timely without just cause reasonably beyond its control;

In 59A-6-2, “Premium Tax – Health Insurance Premium Surtax,” the bill makes the following changes:

a. in paragraph B, the bill eliminates the insurer’s deduction of the dollar amount of return premiums from the amount of gross premiums and membership and policy fees used as the basis for calculating premium tax;

b. in paragraph C, requires that the health insurance premium surtax shall be calculated based on the gross health insurance premiums and membership and policy fees reported on the Schedule T and supporting schedules of its annual financial statement rather than on such

premiums and fees written by the health insurer;

c. in paragraph D, eliminates the estimation of quarterly premium tax payments and requires the actual premium tax due for the current quarter preceding the premium tax date and adds that the New Mexico medical insurance pool credits shall only be granted on the final annual premium tax return, after the final assessments have been issued for the prior calendar year and shall not exceed the premium tax due on the final premium tax return;

In 59A-16C-14, “Insurance Fraud Fund Created; Appropriation,” the bill adds language requiring that all fees collected pursuant to the Insurance Fraud Act for deposit into the insurance fraud fund shall be due on October 1, 2015 and each October 1 thereafter and that the failure of an insurer to pay this fee when due may subject the insurer to a penalty of one thousand dollars per month or part thereof, after notice and demand;

In 59A-22-1, “Scope of Article,” this bill includes student policies among the policies of individual health insurance within the scope of this Article;

In 59A-23-2, Blanket Health Insurance,” this bill deletes from this category of insurance student coverage, which is moved by this bill to Article 22 to be regulated under individual health insurance coverage, in order to satisfy all requirements for student plans of plan parity with major medical plans under the Affordable Care Act (ACA) rule;

In 59A-23B-5, “Policy or Plan Disclosure Requirements,” this bill changes the Superintendent’s review period of all printed, radio, or television communication used for marketing of an insurance policy or plan from 30 to 60 days;

In 59A-25-8, “Filing, Approval and Withdrawal of Forms,” this bill changes the Superintendent’s period for disapproval of any policy, certificate of insurance, notice of proposed insurance, application for insurance, endorsement and rider delivered or issued for delivery in this state and the schedules of premium rates pertaining thereto from 30 to 60 days; and

In 59A-54-10, “Assessments,” this bill adds language requiring that the New Mexico medical insurance pool credits shall only be granted on the final premium tax return, only after the medical insurance pool final assessments have been issued for the prior calendar year, and the medical insurance pool credits shall not exceed the premium tax due on the final premium tax return.

FISCAL IMPLICATIONS

This bill carries no appropriation but has a significant positive general fund impact. The bill would make New Mexico medical insurance pool (MIP) credits nonrefundable, resulting in an estimated \$1 million increase in recurring annual transfers to the general fund. Additionally, under previous administrative practice, a company, while not explicitly allowed to, was able to erroneously claim MIP credits twice, potentially resulting in artificially decreased annual premium tax payments of more than \$4 million per company per annum (see Appendix A for a table showing this issue, the correction, and the potential magnitude for a company’s payments).

OSI identified the process deficiency and recently implemented a new reporting process to help reduce the possibility of double-claiming credits and estimates this could generate at least \$20

million additional recurring general fund revenues. This bill codifies this new procedural process, significantly enhancing the agency's authority to prevent possible underpayments.

There was speculation that the original bill would result in significant revenue.

While the bill itself might not create up to \$20 million impact, but it would significantly improve OSI's ability to collect these revenues that should be received under the new process and prevent the possibility of a company disputing the implementation of the process. These revenue increase projections provided by OSI were based on a limited number of insurers, not the entire pool; therefore, this is a conservative projection.

Premium tax revenue distributions to the general fund are projected to increase from \$115 million in FY14 to \$140 million in FY15 and \$183 million in FY16; these estimates do not currently include this anticipated increase in premium tax collections and general fund transfers.

Premium tax revenues generally are primarily distributed to the general fund; in FY14, \$115 million was transferred to the general fund, \$74 million was transferred to the fire protection fund (which also partially reverts to the general fund), and \$9 million to the law enforcement fund. However, OSI reports the account line items that are affected by the changes in reporting codified in this bill only impact the general fund.

If the high risk pool shrinks in size as expected (as a result of ACA), the revenue projection related to the changes in payment structure will change as insurers are able to apply smaller MIP credits against premium taxes owed. However, OSI reports it has no way of estimating the financial impact that will have on the agency's collections of premium tax in general. MIP enrollment shrank from a high of 8,680 members in 2013 to 4,098 by February 2015, outpacing initial projections for pool depopulation, and the MIP Board estimates enrollment will drop to 3,223 by the end of 2015.

OSI analysis states:

Revenues will increase as a result of requiring insurers, when applying MIP credits against premium taxes owed only after MIP assessments have been issued for the prior calendar year, and prohibiting insurers from applying an annual MIP credit that exceeds the premium tax due on the final premium tax return. These changes will reduce the over-use of the MIP credits and consequently will significantly increase revenues from premium taxes collected.

Revenues are not expected to be significantly impacted by the inclusion of return premiums or the use of Schedule T in the calculation of premium tax owed.

SIGNIFICANT ISSUES

Codifying the way companies must report premium taxes and apply MIP credits is critical; the bill matches OSI's updated procedural process, but prohibiting double-claiming MIP credits in statute prevents the possibility of a future superintendent from reinstating the old process that could result in erroneous, insufficient premium tax payments and a substantial negative impact to general fund revenues. Codifying this process also prevents a company from arguing before OSI or in court that it should be able to continue double-claiming MIP credits. Existing statute is

silent on the subject, and while it seems reasonable to interpret it to prohibit double-claiming credits, providing clarification in statute would prevent the possibility of such a claim.

The OSI is required to seek necessary statutory changes in the Insurance Code to keep New Mexico in compliance with the federal ACA. In order to comply with the ACA requirement that student health plans have all the same benefits as major medical plans, the bill shifts the regulatory authority for student plans from Article 23 of the Insurance Code (blanket health insurance coverage) to Article 22 (individual coverage).

OSI is striving to improve collection of taxes, penalties, and fees and to better administer refunds. To achieve improvements, the bill provides a more efficient way to collect penalties for late annual report filings; clarifies when penalties for late premium taxes are due (however, see issues with this change above in the second paragraph of Significant Issues); simplifies the calculation of premium tax and health insurance premium surtax due; reduces the over-use of medical insurance pool credits against premium taxes due; and provides an annual deadline for payment of insurance fraud fund fees and penalty for late payment.

OSI is experiencing an increase in filings of major medical plans associated with the ACA. To successfully manage review of these plan filings and establish uniformity in the review process, this bill extends the review period for these plans and their associated marketing communications materials from 30 to 60 days.

The bill provides that the penalty period starts after OSI notifies the insurer of a late or insufficient payment and demands proper payment from the company, rather than starting the penalty period from the payment due date. This is incongruous with income tax penalties for late or insufficient payments. Additionally, the penalty of \$1,000 per month might be insufficient given that premium tax payments are often measured in hundreds of thousands or millions of dollars.

PERFORMANCE IMPLICATIONS

Performance at the OSI will be improved in the collection and auditing of premium taxes and the review of major medical plans and associated marketing materials.

ADMINISTRATIVE IMPLICATIONS

Administration will be improved at the OSI in the payment of refunds, while higher education institutions will need to develop new policies and procedures on student health insurance that comply with the Affordable Care Act.

TECHNICAL ISSUES

It may be useful to amend page 4 in subsections B and C to clarify membership and policy fees are earned by the taxpayer rather than written by it.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The New Mexico Insurance Code will not be in compliance with ACA regarding student health insurance coverage at institutions of learning.

APPENDIX A

Premium Tax Payment and Collection Procedures and the Effects on a Hypothetical Company's Payments (dollars in thousands)			
Prior Procedure Potentially Resulting in Erroneous Payments		New, Corrected Procedure Resulting in Correct Payments	
A company might deduct all of the interim payments to MIP from the current year along with last year's Final Assessment. The "Interim Assessments" make up the total on the Final Assessment for that year, as indicated by the colors below. Additionally, MIP issues refunds to companies at the end of the year. If the company is only submitting the interim reports and related checks and not the Final Assessments, OSI would not know to reduce the company's tax credit. Therefore, OSI would have already credited the company for the payment and the tax liability would not increase.		A company may only deduct the prior year's amounts from the Final Assessment of total credit due and includes any refunds issued to companies.	
2013 Final Premium Tax Due	\$ 5,000.0	2013 Final Premium Tax Due	\$ 5,000.0
2012 Final MIP Assessment (total due)	\$ (1,000.0)	2012 Final MIP Assessment (total due)	\$ (1,000.0)
2013 Interim MIP Assessment (less)	\$ (250.0)		
2013 Interim MIP Assessment (less)	\$ (250.0)		
2013 Interim MIP Assessment (less)	\$ (250.0)		
2013 Interim MIP Assessment (less)	\$ (250.0)		
Refund issued to company by MIP on Final Assessment (excluded)	\$ 500.0		
Total Premium Tax Due after MIP Credits	\$ 3,000.0	Total Premium Tax Due after MIP Credits	\$ 4,000.0
2014 Final Premium Tax Due	\$ 5,000.0	2014 Final Premium Tax Due	\$ 5,000.0
2013 Final MIP Assessment (total due)	\$ (1,000.0)	2013 Final MIP Assessment (total due)	\$ (1,000.0)
2014 Interim MIP Assessment (less)	\$ (250.0)		
2014 Interim MIP Assessment (less)	\$ (250.0)		
2014 Interim MIP Assessment (less)	\$ (250.0)		
2014 Interim MIP Assessment (less)	\$ (250.0)		
Refund issued to company by MIP on Final Assessment (excluded)	\$ 500.0	Refund issued to company by MIP on Final Assessment	\$ 500.0
Total Premium Tax Due after MIP Credits	\$ 3,000.0	Total Premium Tax Due after MIP Credits	\$ 4,500.0
2015 Final Premium Tax Due	\$ 5,000.0	2015 Final Premium Tax Due	\$ 5,000.0
2014 Final MIP Assessment (total due)	\$ (1,000.0)	2014 Final MIP Assessment (total due)	\$ (1,000.0)
2015 Interim MIP Assessment (less)	\$ (250.0)		
2015 Interim MIP Assessment (less)	\$ (250.0)		
2015 Interim MIP Assessment (less)	\$ (250.0)		
2015 Interim MIP Assessment (less)	\$ (250.0)		
Refund issued to company by MIP on Final Assessment (excluded)	\$ 500.0	Refund issued to company by MIP on Final Assessment	\$ 500.0
Total Premium Tax Due after MIP Credits	\$ 3,000.0	Total Premium Tax Due after MIP Credits	\$ 4,500.0